and high-handed determination of the Plaintiff's contract, and by the fact that they would not have made any complaint, to the Controller had the plaintiff acquiesced in his treatment and not persisted in pressing for settlement of his account.

Burke for the Defendants.—The evidence of the Defendant Company's officers shows that the letter of the 9th July was written in execution of a duty. The Controller of Labour expects employers of labour to keep him notified of their course of dealing with sub-contractors. The letter was a "privileged communications", and no malice has been shown. Absence of malice is further proved by the Defendants' legitimate cancellation of the Plaintiff's sub-contract.

The following written judgment was delivered on the 23rd January 1939 by Horne J., who after dealing with the other issues in the action, proceeded as follows:—

There remains the issue as to the alleged libel. As soon as the Plaintiff received the letter of the 11th June 1937 cancelling the contract, he appears to have objected and written letters making the claims he has brought in this Court, some of which have been substantiated. Apart from any question of breach of contract there existed a dispute as to items of extras or of underpayment. In reply to the Plaintiff's letter of the 7th July, the Defendants write disputing these claims, except some small items they are still enquiring into, which will amount to a further credit of $250 approximately. They also claim to deduct 25% of the amount under clause 5 of the conditions. They wound up with the paragraph beginning:—

> "We are sending copies of your letter under reply and this letter to the Protector of Chinese.....

Then the letter enclosing the above is sent to the Protector of Chinese (His Lordship read the letter, set forth above, of the 9th July 1937, and proceeded).

The statement "We took over his liabilities to his labour and his food contractors" is plainly untrue, for they say, in their letter of the 11th June, they are setting off the sums paid against sums due under the contract.

The words published to be Protector contained in the penultimate paragraph of the letter of 8th July and in the letter to the Protector of the 9th July are capable of a defamatory meaning. They are a clear attack upon the Plaintiff's reputation.

The Defendants plead privilege. There was no request by the Protector for information. The Defendants had dealt with the situation arising on the 11th June without any recourse to the authorities, and up to the 8th July all that the Plaintiff had asked for was a settlement of his account. The Defendants are not submitting the matter in dispute in order that the Controller of Labour should deal with them.

I fail entirely to understand how these statements can be merely statements stating reasons for not complying with the demands made by the Plaintiff to which "qualified privilege" would *prima facie* attach. Even assuming there was duty (though there is no real evidence of that) to make these communications to the Controller of Labour, then I should find that they were malicious. They misrepresent the facts, and are a plain request to the Controller "to strike the plaintiff off the List of Sub-contractors." They do not appear to me to be made in good faith, but to be the result of annoyance because the Plaintiff would not come to terms. The Plaintiff admits that he had been to the Controller and had been told to take his claim to Court. When he so went is not clear. But even assuming it was before the letter and enclosures were sent to the Controller of Labour, there was no request by him for information even.

I find that the libel is proved. Damages on this issue are difficult to assess. There is no evidence that the plaintiff was struck off the list. Apparently the Controller took no notice of the matter. The publication is of a limited extent, and all that has been put forward by way of defence is a plea of privilege. The Plaintiff does not, and, of course, need not, prove that he has suffered any damage as the result of the words complained of, for the law presumes that *some* damage will flow in the ordinary course of things from the mere invasion of his absolute right to reputation. At the same time, the words are not likely to do him much harm when published to a public officer who is not likely to take them too seriously. I assess the damages at $100.

Solicitor for the Plaintiff—*A. de Mello.*

Solicitors for the Defendants—*John .G. Campbell & Co.*

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

February 17, 1939.

RE SEAH PENG LIAT.

EX PARTE SEAH ENG KEONG and SEAH ENG TONG.

[SINGAPORE BANKRUPTCY No. 328 of 1938]

Bankruptcy—adjudication order—refusal to make order—Court's discretion—grounds for exercise of Bankruptcy Ordinance (Cap. 45) S. 6 (3).

Discretion of the Court to refuse to adjudicate a debtor bankrupt may be exercised in favour of the debtor in a proper case such as a case where an adjudication

order will be of no real value to the creditors and may cause very serious hardship to the debtor.

BANKRUPTCY PETITION.

Seth for petitioning creditors.
Tampoe Phillips for the debtor.

Cur. Ad. Vult.

McELWAINE, C.J.—This petition for a receiving order alleges as the act of bankruptcy non-compliance with a bankruptcy notice calling upon Seah Peng Liat to pay to Seah Eng Keong and Seah Eng Tong $874.45, being the amount of costs due on a final judgment.

The facts are not in dispute.

The petitioning creditors are two of the original executors and trustees of the estate of Seah Liang Seah deceased.

In suit No. 408 of 1937 (the affidavit reference 408/38 is a mistake) Seah Eng Thye took proceedings against his co-trustees, the petitioning creditors, and Seah Eng Teck, which resulted in a compromise, the defendants being ordered to indemnify the estate for money lost to the estate by reason of their having failed to recover certain debts due to the Estate. Seah Eng Thye was appointed trustee by deed in the room of Seah Eng Teck who retired in 1930.

The debtor Seah Peng Liat brought a suit 103/1937 against the petitioning creditors and the new trustee Seah Eng Thye for the removal of the defendants from their trusteeship. That suit was withdrawn and the debtor incurred $874.45 costs to the petitioning creditors and $640.85 to Seah Eng Thye who was separately represented and who, though not a petitioning creditor, concurs in these proceedings.

The real purpose of these bankruptcy proceedings can be inferred from the petitioning creditors' joint affidavit of the 6th February 1939:—

> "If such costs are not paid by the debtor they will by virtue of the Trustees' ordinary right to indemnity be paid out of the estate of the deceased which will result in diminishing the fund and the income derived therefrom to which beneficiaries are entitled and will thus have the effect of depriving for a period of 7 years such beneficiaries of the income produced by the amount paid out for costs. If the debtor's share is forfeited under Clause 15 of the Will of the deceased by reason of an adjudication order in bankruptcy such share will be an accretion to the trust fund out of which the aforesaid costs will be paid and will thus constitute an indemnity to the beneficiaries entitled thereto".

The petitioning creditors fear that if they indemnify themselves out of the estate without first having tried to enforce payment of these costs against the debtor, they may be exposed to further proceedings similar to suit 408 of 1937. They did not appear to be over-anxious that this petition should succeed.

The litigation culminating in this petition commenced with an Originating Summons No. 38 of 1937 taken out on the 25th February, 1937, against the petitioning creditors who had failed to collect $25,615 due to the estate of Seah Liang Seah.

On 11th March, 1937, the debtor, a residuary legatee under the will of Seah Liang Seah, took out a summons asking for liberty to attend the proceedings in Originating Summons No. 38 of 1937 but the summons was dismissed.

On the hearing of the Originating Summons the Court directed an enquiry as a result of which suit No. 408 of 1937 was commenced on the 25th September 1937.

Suit No. 103 of 1937 was commenced on the 6th March, 1937, the plaintiff (the present debtor) claiming that the defendants be removed from their trusteeship.

The petitioning creditors say that this suit was unnecessary as the proceedings initiated by Originating Summons No. 38 of 1937 sufficiently protected his interest. In any case the debtor withdrew his suit No. 103 of 1937 on the 23rd August, 1938, and in a judgment debtor summons in that suit the present debtor swore:—

> "I expected to get the benefit that the trustees should collect debts due to the estate, and if they could not collect them to pay the amount of such debts out of their own pockets"—

the exact effect of Originating Summons No. 38 of 1937 and Suit No. 408 of 1937.

The debtor's action in Suit No. 103 of 1937 appears to have been unnecessarily brought.

The ground on which the present petition is opposed is that if the debtor is adjudicated bankrupt, he will lose his expectancy under the will of the said Seah Liang Seah.

It appears that the debtor is employed at a salary of $25/–, and it is suggested that he has no other assets except the expectancy under the will which he will lose if he is adjudicated.

There is no doubt that an act of bankruptcy has been committed but Mr. Tampoe Phillips asks me to exercise my discretion under section 6 (3) and dismiss the petition on the grounds that adjudication will be of no benefit to the petitioners and that it will deprive the debtor of the only asset he possesses.

What the amount of the debtor's expectancy is cannot be ascertained till 1946 when the estate of the testator falls to be distributed but the probability is that it will far exceed the amount of the debtor's present debts which aggregate $1,515.30.

My attention was drawn to 2 *Halsbury (Hailsham Ed.)* section 99 in which appears the paragraph:—

> "The fact that the debtor has only one asset, e.g. an interest determinable on bankruptcy which would be destroyed if a receiving order were made, is sufficient reason for the Court to refuse to make such an order",

which cites as its authority *In re Otway* (1895) 1 Q.B. 812.

The merits of the debtor in *Otway's* case were certainly better than the merits of the present debtor. But in that case Lord Esher said:—

> "Then, upon the other point, it seems to me to be clear that to let this petition go on would be doing what is called in *Ex parte Robinson, In re Robinson*, a vain thing; and, if that is true, that case says the Bankruptcy Court ought not to allow things to go on, and that the petition should be put an end to. Now here the evidence is clear that if there is this bankruptcy the only asset out of which the bankrupt can pay any creditors, including the petitioning creditor, is an asset which by the bankruptcy is put an end to, and nothing is left. The case comes within s. 7, sub-s. 3, of the Bankruptcy Act, 1883, which says that there are sufficient causes, besides those specially named in the section, for which the Court may come to the conclusion that no order ought to be made, and that the petition should be dismissed".

If a debtor has no assets and is not likely to become possessed of any, the making of a receiving order is "a vain thing" and may be refused. *In re Emma Somers* 4 Manson 227, but the Court is not lightly to accept the debtor's statement that he has no assets or prospect of getting assets. In *In re Betts* (1897) 1 Q.B. 50. Lord Esher pointed out that "the Court is not at this stage of the proceedings in a position to know whether that statement of the debtor is true". That is, because there had not been a public examination. But in the case before me the debtor was examined on behalf of the petitioning creditors on the judgment debtor summons and no assets were disclosed.

I am however, far from thinking that this should be regarded as proof that this young man, even if he has no assets now, will not become the owner of property apart from the will.

What does impress me is that an adjudication may be of no real value to the creditors in this case and may cause very serious hardship to the debtor.

The debts are, so far as the evidence indicates, all for costs in the suit No. 103 of 1937. It is not a case of extravagence of living or of speculation or borrowing.

The creditors point out that if they reimburse themselves out of the trust fund that fund will be reduced and therefore the beneficiaries who receive interest from it will receive smaller dividends. The advantage of adjudication is that the debtor's interest, if forfeited, will be an accretion to the trust fund which will more than make up to the fund what it loses by the creditors indemnifying themselves from it.

It appears to me that if I dismiss this petition, the petitioning creditors as trustees will continue to hold the share of the property to which the debtor may possibly be entitled in 1946.

If his interest vests, they can, before paying him, deduct the amount they have drawn from the fund together with interest on that amount from the sum to which the debtor may be found to be entitled to recover from the trustees. With the money so made available the beneficiaries whose interest in the income of the fund has been reduced, can receive at the debtor's expense the amount they have short received.

It appears to me therefore that the petitioning creditors really hold sufficient security for the debt due to them if the debtor's interest under the will ever vests in possession. If that interest is merely contingent and never vests, the adjudication will serve no useful purpose so far as the debtor's interest is concerned.

Should the debtor become possessed of assets at any future time within the life of the petitioning creditors' judgment or if the debtor gets into further debt, the petitioning crediors may serve a fresh bankruptcy notice demanding payment of the amount due to them under their judgment.

The petition is dismissed without costs.

Petition dismissed.

Solicitors for the Petitioning Creditors—
Sisson & Delay.

Solicitor for the Debtor—
E. M. Tampoe Phillips.

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

March 1, 1939.

IN THE ESTATE OF SYED HUSSAIN BIN OMAR BIN SHAHAB DECEASED.

[SINGAPORE PROBATE No. 51 of 1939]

Will—Probate—Executor according to the tenor—form of Grant—Section 10 Probate and Administration Ordinance (Cap. 51) Practice—Translation of Will and proof of validity of Will in country of domicil.

Deceased died at Gussie, Netherlands Indies, leaving a notarially executed will dated the 26th March 1909 and attested according to the Dutch form, by which he appointed his son Said Ali bin Hassain bin Mohamed Shahab and his brother Said Ahmad bin Mohamed bin Ali to be his "testamentary executors, jointly and severally". He